

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-003-13-1-5-00235-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-13-483-002.000-003  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 4733 W. 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,200 for 2013.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 6, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. Hearing Officers Robert Metz and Joseph E. James represented the Assessor. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2014-2018
Petitioner Exhibit B:	Property record card for 2010-2015
Petitioner Exhibit C:	GIS map of the subject parcel <sup>1</sup>
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

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<sup>1</sup> The Assessor offered no exhibits.

## BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. The property's value remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. Nowacki contends this property is in a blighted area with little development. The characteristics on the property record card show the topography as level, while the property is actually low-lying and only has vegetation. The property record card also shows that there are paved streets and public utilities despite the property having neither. The property record card further indicates that the neighborhood life cycle is static even though the significant decrease in the assessed value from \$3,600 in 2010 to \$1,200 in 2018 indicates a decline of 66%. *Nowacki testimony; Pet'r Exs. A-C.*

Nowacki acquired the property at auction in 2010 for \$100. When he purchased the property, it was assessed at \$3,600, or 300% of its market value. The property had churned through the tax sale system since 1994 with zero interest because of the over-assessment. Nowacki contends that while the assessed value has changed, the market value has not. The market value was never \$3,600, \$2,200, or even \$1,200. He believes that a reasonable assessed value for the property is \$500. *Nowacki testimony.*

9. The Assessor's case:
  - a. The Assessor recommends no change to the assessment. *James testimony.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead

determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* March 1<sup>st</sup> was the legal assessment date for this appeal. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property’s 2013 assessment should be \$500, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. To the extent Nowacki was asserting that his 2010 purchase established a market value of \$100, we disagree. The purchase price of a property can be the best evidence of a property’s value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 918 N.E.2d 311,315 (Ind. Tax Ct.2010). But Nowacki failed to provide any indication that the sale met the requirements of an open market transaction. Nor did he present evidence relating the purchase price to the relevant valuation date. Consequently, the purchase price is not probative evidence of the property’s market value-in-use.
- e. We also give no weight to his claims regarding the property’s decreasing assessment. The Assessor’s decision to decrease the property’s assessment between 2010 and 2018 does not prove that the 2013 assessment was incorrect. As the Tax Court has explained, “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See e.g. Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- f. Nowacki also claims that some of the property’ characteristics are incorrect on the property record card. However, even if the Assessor made errors, simply challenging

the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*

- g. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property’s 2013 assessment.

ISSUED: July 30, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.